

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:23-cv-21684-RNS

FRANK E. POLO, SR.,

Plaintiff,

v.

SCOTT MARCUS BERNSTEIN;
MARCIA DEL REY;
SPENCER MULTACK;
THOMAS LOGUE;
MANUEL A. SEGARRA III;
MERLIN HERNANDEZ;
RANDOLPH MARTINEZ;
ST. THOMAS UNIVERSITY, INC.;
SEGARRA & ASSOCIATES, P.A.;
THIRD DISTRICT COURT OF APPEALS;
ELEVENTH JUDICIAL CIRCUIT COURT OF
FLORIDA;

Defendants.

_____/

**DEFENDANT’S (ST. THOMAS UNIVERSITY, INC.) RESPONSE
TO PLAINTIFF’S AMENDED MOTION TO ALTER OR AMEND THE JUDGMENT**

Defendant, St. Thomas University, hereby responds to Plaintiff’s Amended Motion to Alter or Amend the Judgment (DE 62).

Overview

On July 22, 2024, this Court entered a Second Omnibus Order (DE 55) which thoroughly explained the various reasons that the Court was dismissing this case as to all defendants. The Court reviewed the history of Plaintiff’s various attempts to state causes of action, noted his failure to comply with previous court orders dismissing numerous prior iterations of his Complaint, and found that “it is impossible for the Court (or the Defendants) to discern which allegations could possibly correspond to which claims.” (p. 4). In

concluding, the Court noted that “[b]ecause Polo has repeatedly disregarded the Court’s orders and because, after being afforded generous opportunities to amend, his complaint remains a shotgun pleading, his case is dismissed.” (p. 6). Consequently, and with good reason, this Court entered judgment in favor of the defendants on July 23, 2024. (DE 56).

Plaintiff’s Amended Motion to Alter or Amend the Judgment argues that the Court failed to provide specific findings supporting dismissal, challenges “the court’s refusal to reclude itself,” and posits that amendment of the judgment is justified because Plaintiff’s attempts to amend the complaint were made in good faith. These grounds are plainly deficient to justify any kind of reconsideration of the dismissal of this case.

Argument

Reconsideration of a judgment under Rule 59(e) is an extraordinary remedy which should be used sparingly, and is reserved for exceptional circumstances. *See, e.g., Griffin v. Swim-tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984). “The only grounds for granting a rule 59 motion are newly discovered evidence or manifest errors of law or fact.” *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007). A Rule 59 motion cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment. *Michael Linet, Inc. v. Vill. of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005).

Plaintiff’s arguments plainly fail to meet the requirements of a Rule 59 motion. He simply attempts to justify his shotgun pleadings and disjointed purported causes of action which were thoroughly considered and dismissed by this Court for various articulated reasons. Plaintiff fails to identify any manifest error of law or fact and he is again re-litigating “old matters.” He is not entitled to relief under Rule 59.

Conclusion

Rule 59 has the laudable purpose of allowing a court to amend a judgment where there has been an intervening change in the law, newly discovered evidence, the need to correct legal error, and to prevent manifest injustice. Because none of the recognized bases for relief are present here, Defendant respectfully requests that Plaintiff's motion be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 3, 2024, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel or parties of record on the Service List below.

s/ Roberto J. Diaz

Roberto J. Diaz, Esq.

SERVICE LIST

CASE NO: 1:23-cv-21684-RNS
United States District Court, Southern District of Florida

Frank Polo
Fepm2024@hotmail.com
1475 SW 8th St, Apt. 411
Miami, FL 33135
Telephone: (305)901-3360

Plaintiff

Roberto J. Diaz
rjd@jpfitzlaw.com
J. Patrick Fitzgerald & Assoc., P.A.
110 Merrick Way, Suite 3-B
Coral Gables, FL 33134
Telephone: (305) 443-9162
Facsimile: (305) 443-6613

Counsel for St Thomas University, Inc.,